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9 Attorneys for United States of America

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,	) CASE NO. 4-20-70963 MAG
14 Plaintiff,	)
15 v.	) STIPULATION AND [PROPOSED] ORDER
16 MARNIQUE SIMON,	) SETTING MATTER FOR STATUS
17 Defendant.	) REGARDING PRELIMINARY HEARING OR
	) ARRAIGNMENT AND EXCLUDING TIME
	) UNTIL MAY 10, 2021
18	)
19	)

20 Plaintiff United States of America, by and through its counsel of record, the United States  
 21 Attorney for the Northern District of California and Assistant United States Attorney Thomas R. Green,  
 22 and defendant Marnique Simon (Simon or defendant), by and through his counsel of record, Assistant  
 23 Federal Public Defender Graham Archer, hereby stipulate as follows:

24 1. On July 16, 2020, the Honorable Donna M. Ryu signed a federal criminal complaint  
 25 charging defendant with being a felon in possession of ammunition in violation of 18 U.S.C. §  
 26 922(g)(1). On September 30, 2020, defendant made his initial appearance and was advised of the charge  
 27 on the criminal complaint. On October 8, 2020, a detention hearing was held, and the Honorable  
 28 Nathanael M. Cousins issued an order detaining defendant.

**FILED**

Apr 21 2021

SUSAN Y. SOONG  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

1       2.     The parties appeared for status conferences regarding preliminary hearing or arraignment  
2 on March 29 and April 19, 2021. At the appearances the parties requested that this matter be set for a  
3 future status conference regarding preliminary hearing or arraignment, most recently set for May 10,  
4 2021, and agreed to exclude time for purposes of calculations under the Speedy Trial Act and Rule 5.1  
5 of the Rules of Criminal Procedure. The court set the next appearance for May 10, 2021, and ordered on  
6 the record that time should be excluded as requested. The parties now submit this stipulation to  
7 document their agreements and the exclusions of time ordered on the record.

8       3.     The government has produced discovery relating to defendant's arrest and criminal  
9 history to the defendant this week. The discovery produced includes the production of recordings made  
10 around the time of defendant's arrest. The government and defendant are also exploring the potential  
11 for a pre-indictment disposition. Counsel for defendant requires additional time to review discovery and  
12 discuss and advise the defendant regarding the evidence, including as to the merits of a potential  
13 disposition or proceeding to trial. Counsel for the defendant has also sought additional discovery from  
14 the government and is in the process of conducting his own investigation that may result in discovery  
15 being produced by the defendant to the government, or additional discovery requests by the defendant.

16       4.     The present rules governing visits to Santa Rita Jail and the need for the defense to  
17 schedule meetings or telephone or videoconference calls with defendant further support the requested  
18 continuance. Thus, with the consent of defendant, counsel for defendant represents that additional time  
19 is necessary to review the discovery in this action, confer with defendant, conduct and complete an  
20 independent investigation of the case, and prepare for trial in the event that a pre-indictment resolution  
21 does not occur.

22       5.     Defense counsel represents that defendant understands that he has a right under 18 U.S.C.  
23 § 3161(b) to be charged by information or indictment with the offense alleged in the pending criminal  
24 complaint and that defendant knowingly and voluntarily waives the time to be charged by indictment or  
25 information from Speedy Trial Act calculations until May 10, 2021. Defense counsel further represents  
26 that his client knowingly and voluntarily waives the timing for a preliminary hearing under Federal Rule  
27 of Criminal Procedure 5.1 until the requested status hearing date of May 10, 2021.

1       6. For purposes of computing the date under Rule 5.1 of the Federal Rules of Criminal  
2 Procedure for preliminary hearing, and the date under the Speedy Trial Act by which defendants must be  
3 charged by indictment or information, the parties agree that the time period of March 29, 2021, to May  
4 10, 2021, inclusive, should be excluded pursuant to 18 U.S.C. §§ 3161(b), (h)(7)(A), (h)(7)(B)(i) and  
5 (h)(7)(B)(iv) because the delay results from a continuance granted by the Court at defendants' request,  
6 without government objection, on the basis of the Court's finding that: (i) the ends of justice served by  
7 the continuance outweigh the best interest of the public and defendants in the filing of an information or  
8 indictment within the period specified in 18 U.S.C. § 3161(b); and (ii) failure to grant the continuance  
9 would unreasonably deny defense counsel the reasonable time necessary for effective preparation,  
10 taking into account the exercise of due diligence

11       7. Nothing in this stipulation shall preclude a finding that other provisions of the Speedy  
12 Trial Act dictate that additional time periods be excluded from the period within which an information  
13 or indictment must be filed.

14       8. Based on his communications with the defendant, defense counsel represents that  
15 defendant desires to set this matter for a status regarding preliminary hearing or arraignment on May 10,  
16 2021, and agrees to the stipulations expressed in this filing, for all of the reasons described in this  
17 stipulation. The undersigned Assistant United States Attorney certifies that he has obtained approval  
18 from counsel for the defendant to file this stipulation and proposed order.

19           IT IS SO STIPULATED.

20           DATED: April 21, 2021

21           Respectfully Submitted,

22           DAVID L. ANDERSON  
23           United States Attorney

24           \_\_\_\_\_  
25           /s/ *Thomas R. Green*  
26           THOMAS R. GREEN  
27           Assistant United States Attorney

28           \_\_\_\_\_  
29           /s/ *Graham Archer*  
30           GRAHAM ARCHER  
31           Attorney for Marnique Simon

1                   **[PROPOSED] ORDER**

2                  The Court has read and considered the Stipulation Regarding Request for (1) setting this matter  
3 for a status hearing and (2) an exclusion of time under the Speedy Trial Act and Rule of Criminal  
4 Procedure 5.1, filed by the parties in this matter. The Court hereby finds that the Stipulation, which this  
5 Court incorporates by reference into this Order, demonstrates good cause for a finding of excludable  
6 time pursuant to the Speedy Trial Act, 18 U.S.C. § 3161, as well as to waive the timing for preliminary  
7 hearing under Rule 5.1 of the Federal Rules of Criminal Procedure.

8                  The Court further finds that: (i) the ends of justice served by the continuance outweigh the best  
9 interest of the public and defendants in the filing of an information or indictment within the time period  
10 set forth in 18 U.S.C. § 3161(b); and (ii) failure to grant the continuance would unreasonably deny  
11 defense counsel the reasonable time necessary for effective preparation, taking into account the exercise  
12 of due diligence.

13 THEREFORE, FOR GOOD CAUSE SHOWN:

14                 The Court sets this matter for a status regarding preliminary hearing or arraignment on ~~January~~  
15 <sup>May</sup>  
10, 2021. The time period of March 29, 2021, to May 10, 2021, inclusive, is excluded in computing the  
16 time within which an information or indictment must be filed under 18 U.S.C. § 3161(b), and the time  
17 by which any trial must commence pursuant to the provisions of 18 U.S.C. §§ 3161(h)(7)(A),  
18 (h)(7)(B)(i), and (B)(iv). The Court also finds that defendant waives the timing by which a preliminary  
19 hearing must be held pursuant to Rule 5.1 of the Federal Rules of Criminal Procedure for the time period  
20 of March 29, 2021 through May 10, 2021. Nothing in this Order shall preclude a finding that other  
21 provisions of the Speedy Trial Act dictate that additional time periods are excluded from the period  
22 within which an information or indictment must be filed.

23                 IT IS SO ORDERED.

24  
25 April 21, 2021

26 DATE



27  
28 HONORABLE ROBERT M. ILLMAN  
UNITED STATES MAGISTRATE JUDGE